No. 92-6921

IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1992

ORIGINAL

ROY LAWREUCE BOURGEOIS,
CHARLES JOSEPH LITEKY, and
JOHN PATRICK LITEKY,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

By: Peter Thompson, 109344
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Attorneys for Petitioners

1992 – BACHMAN LEGAL PRINTING, 835 Second Avenue South, Minneapolis, MN 55402 – (612) 339-9518 ■ FAX 612-337-8053

QUESTION PRESENTED FOR REVIEW

DOES 28 U.S.C. §455(a), WHICH PROVIDES THAT "ANY JUDGE...SHALL DISQUALIFY HIMSELF IN ANY PROCEEDING IN WHICH HIS IMPARTIALITY MAY REASONABLY BE QUESTIONED," REQUIRE THAT THE CAUSE OF THE APPARENT BIAS STEM FROM AN EXTRA-JUDICIAL SOURCE?

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OPINION BELOW

This Petition for Certiorari arises from the judgment of the Eleventh Circuit Court of Appeals dated September 28, 1992 which affirmed the decision of the United States District Court for the Middle District of Georgia.

JURISDICTION

Petitioners John Liteky, Patrick Liteky and Roy Bourgeois were convicted of willfully injuring federal property in violation of 18 U.S.C. §1361. The United States Court of Appeals for the Eleventh Circuit affirmed the decision of the District Court in a published Opinion filed September 28, 1992. This Court has jurisdiction to review the judgment of the Court of Appeals by Writ of Certiorari pursuant to Title 28 U.S.C. §1254(1).

FEDERAL STATUTE INVOLVED

Title 28 U.S.C. §455(a) provides:

> Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

STATEMENT OF THE CASE

Charles Liteky, John Liteky and Father Roy Bourgeois entered Fort Benning Military Reservation on November 16, 1990 and doused the Army School of the Americas in blood. Their actions were provoked by School of the Americas' trainees who killed six Jesuit priests and two other civilians in El Salvador on November 16, 1989. (T. 184-85; 220-28; 250; 270; 276). Defendants were tried for willfully injuring government property before District Court Judge J. Robert Elliott.

In 1983, Judge Elliott presided over another criminal case where Father Bourgeois was tried on six misdemeanors for protests at Ft. Benning. In a pretrial Motion for Recusal in the 1991 trial, Bourgeois alleged that Judge Elliott's intemperate remarks during the 1983 trial reflected a personal bias against him and raised an appearance of bias in favor of the government in civil disobedience cases. A copy of the 1983 transcript was submitted. The District Court refused even to consider Bourgeois' allegations. Rather, Judge Elliott held, in written opinion, that the Court was not permitted, as a matter of law, to consider any bias which arose in connection with a judicial proceeding. (Order on Motion, p. 1, Appendix A-19).

During the defendants' trial, Judge Elliott frequently confronted the defendants, belittled and demeaned their deeply held religious convictions, and refused to allow them to testify about material facts. Following one such outburst from the Bench, Bourgeois' attorney reiterated the defense request for recusal. Judge Elliott again denied the Motion. (T. 201).

The defendants appealed the District Court's denial of their Motion for Recusal to the United States Court of Appeals for the Eleventh Circuit, arguing that judicial bias

need not stem from an extra-judicial source for the purposes of 28 U.S.C. §455(a). The Eleventh Circuit rejected defendant's argument on appeal. In contrast to other Circuit Courts of Appeal to consider the question recently, the Eleventh Circuit held that "matters arising out of the course of judicial proceedings are not a proper basis for recusal." United States v. Liteky, 973 F.2d at 910 (11th Cir. 1992).

REASONS FOR GRANTING THE WRIT

The Eleventh Circuit decision in United States v. Liteky, and the Fifth and Ninth Circuit opinions on which it was based, are in direct conflict with a recent, well reasoned decision of the First Circuit, United States v. Chantal, 902 F.2d 1018 (1st Cir. 1990). The Liteky ruling also conflicts indirectly with recusal decisions in Haines v. Liggett Group, 975 F.2d 81 (3rd Cir. 1992) and several other decisions involving the supervisory power of the courts of appeals to remove district court judges. The Liteky holding is also at odds with 28 U.S.C. §455(a)'s legislative history, the reasoned opinions of all commentators to consider the issue, and risks injustice in a wide array of future judicial recusal and supervisory removal cases.

28 U.S.C. §455 provides in relevant part:

> a). Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in

> which his impartiality might reasonably be questioned.
>
> b). He shall also disqualify himself in the following circumstances:
>
> 1. Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

Courts apply different standards of proof to subsections (a) and (b) in determining whether disqualification under §455 is required.

Section 455(a) requires disqualification in any proceeding in which the judge's impartiality "might reasonably be questioned." In the Ninth Circuit, the test for disqualification under this subsection is:

> Whether or not given all the facts of the case there are reasonable grounds for finding that the judge could not try the case fairly either because of the appearance or the fact of bias or prejudice. United States v. Conforte, 624 F.2d 869, 881 (9th Cir.), cert. denied, 449 U.S. 1012 (1980).

This standard is an objective standard requiring disqualification "if there is a reasonable factual basis for doubting the judge's impartiality." Id, quoting H. R. Rep. No. 1453, 93rd Cong., 2nd Sess., reprinted in [1974] U.S. Code Cong. & Ad. News 6351, 6354.

On the other hand, disqualification under §455(b) is not based on an objective standard but requires a showing of actual bias in fact. On this point the circuits are in agreement. See, United States v. Chantal, 902 F.2d 1018, 1023 (1st Cir. 1990), and United States v. Conforte, 624

F.2d at 881. Also, the courts are in agreement that the "bias in fact" standard of §455(b) requires that the source of bias be extra-judicial. See, id.

The point over which the United States Courts of Appeals are irreconcilably divided is whether bias which results from a judge's involvement in judicial proceedings can require recusal under §455(a). Compare, e.g., Liteky, 973 F.2d at 910 (bias acquired during previous case involving defendant is irrelevant under §455(a)); Davis v. Board of School Comm'rs., 517 F.2d 1044, 1051 (5th Cir. 1976) (bias must stem from extra-judicial source to justify recusal); United States v. Sibla, 624 F.2d 864 (9th Cir. 1990) (§455(a) only requires recusal in cases of personal, non-judicial bias) with United States v. Chantal, supra (appearance of bias arising in the course of a previous similar case requires recusal); Nicodemus v. Chrysler Corp., 596 F.2d 152 (6th Cir. 1979) (reversing a district court decision and disqualifying the judge from further participation in the case due to an appearance of bias arising in the course of a pretrial hearing).

The circuit split is so clear and well defined that Senior Circuit Judge John R. Brown of the Fifth Circuit, sitting by designation for the Chantal appeal, commented "Lest I commit myself to judicial harakari I hastily acknowledge that at home I must and will follow the Fifth Circuit's holdings . . . which from the vantage of the First

Circuit is wrong." 902 F.2d at 1022, n. 10. These inconsistencies were recently recognized by two Justices of this Court, Justice White and Justice O'Connor, who dissented in denying a writ of certiorari to the Ninth Circuit in a case which presented the very same issue. See, Walker v. United States, ___ U.S. _____, 1112 S.Ct. 2321, 119 L.Ed.2d 239 (1992).

Chantal, supra is directly on point to the situation in Liteky. In Chantal, the district judge issued strong condemnation of the defendant during the sentencing phase of a prior criminal trial. The defendant moved for recusal under §455(a), citing the judge's apparent bias against him. The district judge, like the district judge in Liteky, refused to consider the merits of defendant's motion and held that judicially acquired bias was not grounds for recusal under §455(a). 902 F.2d 1019-20. The First Circuit reversed, holding that the proper inquiry under §455(a) was whether or not there was an appearance of bias. Where the bias arose, Chantal reasoned, is completely irrelevant. 902 F.2d at 1022-24. Although Liteky declined to offer any justification for its decision to require an extra-judicial source, or even mention the First Circuit's contrary conclusion, the two decisions are in direct conflict.

Liteky, and the Fifth Circuit decisions on which it is based, are also philosophically at odds with the recent decision in Haines v. Liggett Group, 975 F.2d 81 (3rd Cir.

1992). Haines, supra, exercised its supervisory powers to remove the district court judge. The Third Circuit took this extraordinary remedy in light of the district court judge's "statements contained in the opinion that is the subject of this petition." 975 F.2d 97. Haines and Chantal also find support in United States v. Coven, 662 F.2d 162 (2nd Cir. 1981), cert. denied, 456 U.S. 916 (1982), which held that appearance of partiality, either judicially acquired or personal, requires removal of the district judge. Similarly, Roberts v. Bailar, 625 F.2d 125 (6th Cir. 1980) vacated and remanded a district court decision and disqualified the judge as a result of the judge's conduct during a pretrial hearing.

Haines, supra, took pains to point out that the test for supervisory removal is the appearance of impartiality. The test "is not our subjective impressions of [the district judge's] impartiality gleaned after reviewing his decisions these many years; rather, the polestar is 'impartiality and the appearance of impartiality." Haines, 975 F.2d at 98. Importantly, this is exactly the same test for recusal under §455(a). 28 U.S.C. §455(a) (1988); see also, Potashnick v. Port City Const. Co., 609 F.2d 1101, 1111 (5th Cir.), cert. denied, 499 U.S. 820 (1980) (§455(a) is governed by an appearance of impartiality standard).

Haines reasoned that it did not matter whether the appearance of bias arose in a judicial proceeding, an

opinion very much at odds with Liteky. The position articulated in Haines is irreconcilable with the extra-judicial source requirement promulgated by the Fifth, Ninth and Eleventh Circuits. Haines, decided after certiorari was denied in Walker, underscores the conflict among the circuits with regard to judicially acquired bias and the need for Supreme Court guidance on this issue.

In large part, the confusion surrounding §455(a) stems from a misunderstanding of the interrelationship between the two federal recusal statutes: §455(a) and 28 U.S.C. §144 (1988).

Prior to the adoption of 28 U.S.C. §455 in its present form, recusal was governed by 28 U.S.C. §144, which provides:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of an adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. 28 U.S.C. §144 (1988).

Courts have uniformly held that the language "personal bias or prejudice" referred to bias personally acquired, as opposed to judicial bias. See, Bloom, Judicial Bias In Financial Interest As Grounds Of Disqualification Of Federal Judges, 35 Case Western Reserve L.Rev. 663, 670-76 (1985) [hereinafter Bloom]. Thus, for "[t]he alleged bias and prejudice to be disqualifying [it] must stem from an

extra-judicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." United States v. Grinnell Corp., 384 U.S. 563, 583 (1966).

In 1974, Congress amended §455 for the express purpose of broadening and clarifying the grounds for judicial disqualification. H. R. Rep. No. 1453, 93rd Cong., 2d Sess. 2, reprinted in 1974 U.S. Code Cong. & Ad. News 6351, 6352. Importantly, §455(a) does not include language which requires a "personal bias or prejudice," but rather provides:

> Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. 28 U.S.C. §455(a).

Congress amended §455(a) to liberalize the recusal process in a number of ways. Id; Bloom, supra, at 672. First, §455(a) operates to increase public confidence in the judicial system by ensuring that the judges recuse themselves wherever there is "an appearance of impartiality," as opposed to actual judicial bias. Potashnick, 609 F.2d at 1111; Roberts v. Bailar, 625 F.2d 125, 129 (6th Cir. 1980). Furthermore, the 1974 Amendments changed §455 to ensure that it was applied through an objective, reasonable person standard, rather than a judge's subjective determination of bias in fact. Chantal, 902 F.2d at 1023. The 1974 Amendments also require a district judge to recuse himself whenever there is any question about the court's

impartiality. Under the new §455, "[e]ven where the question is close, the judge whose impartiality might reasonably be questioned must recuse himself from the trial." Roberts, 625 F.2d at 129.

The 1974 Amendments to §455(a), which Congress expressly designed to liberalize the recusal requirements, also had the effect of abandoning the extra-judicial source requirement. All commentators to consider the question agree. Bloom, supra, at 670-676; Comment, Questioning The Impartiality Of Judges: Disqualifying Federal Court Judges Under 28 U.S.C. §455(a), 60 Temple L.Q. 697, 715-17 (1987) [hereinafter Temple Comment], p. 715-717. "The appropriate focus under §455(a) is not whether the judge's statement springs from an extra-judicial source but instead whether the judge's statement or action would lead a reasonable person to question whether the judge would remain impartial." Temple Comment, supra, at 717.

The current trend in the federal court system also supports a construction of §455(a) which requires recusal for judicially obtained bias. Chantal, 902 F.2d at 1021-1024; United States v. Coven, 662 F.2d at 168; Nicodemus, 596 F.2d at 155-56; United States v. Conservation Chem. Co., 106 F.2d 210, 234 (W.D. Mo. 1985). These well-reasoned decisions articulate the position that "the fact that the source of the judge's bias arises out of or originates in judicial proceedings [does not] immunize the judge from

the inquiry whether such factor would, in the mind of a reasonable person, raise a question about the judge's impartiality." Chantal, 902 F.2d at 1023-24.

In contrast, scholars have widely criticized Corrugated Container Antitrust Litigation, supra; and Davis, supra, the decisions upon which the Eleventh Circuit relied in denying defendants' appeal. See, Bloom, supra, at 675-76; Chantal, 902 F.2d at 1022-23. These decisions maintain that §455 is subject to the same legal tests and standards as §144, and conclude that the extra-judicial source requirements to §144 applies with equal force to §455. Corrugated Container Antitrust Litigation, 614 F.2d at 965; Davis, 517 F.2d at 1051.

These decisions are incorrect, however, in assuming that §455(a) and §144 are governed by the same legal standards. Rather, Congress enacted §455(a) for the express purpose of creating different, and more lenient, standards to govern the recusal process. Cf., United States v. Alabama, 828 F.2d at 1540-1541 (recognizing that the two recusal statutes have different affidavit requirements, that §455(a) did away with the "duty to sit" rule, that the burden of proof under §455(a) is much more lenient, providing for an objective, rather than subjective, standard for determining whether or not recusal is appropriate). Because the standards and procedures governing the application of §455(a) and §144 are completely different,

commentators have criticized the Fifth Circuit's conclusion that both should be governed by the same extra-judicial source requirement. The Fifth Circuit approach is inconsistent with §455's statutory language and legislative history. Bloom, supra, at 675-76; Temple Comment, supra, at 248-49.

Even more disturbing, by considering §144 and §455(a) in pari materia, the Eleventh Circuit in effect replaces the new "appearance of impartiality" standard with the old "bias in fact" standard used to evaluate recusal decisions prior to the passage of the 1974 Amendments. Bloom, supra, at 675-76. This approach is directly contrary to §455(a)'s unequivocal congressional mandate. Id. Supreme Court guidance is required to address the Eleventh Circuit's error.

CONCLUSION

Petitioners base this Petition on the fact that the Eleventh Circuit has departed from the better reasoned decision of the First Circuit in establishing an extra-judicial source requirement for recusal under 28 U.S.C. §455(a). The Eleventh Circuit approach is at odds not only with other United States Courts of Appeals, but also with the statutory language, the legislative history and traditional notions of fairness. For all the foregoing reasons, Petitioners

respectfully request the Court to review the judgment of the Eleventh Circuit Court of Appeals.

Dated: December 10, 1992

Respectfully submitted,

THOMPSON, LUNDQUIST & SICOLI, LTD.

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Peter Thompson
2520 Park Avenue South
Minneapolis, Minnesota 55404
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Reg. No. 109344

Attorneys for Petitioners

APPENDIX

United States Court of Appeals

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
SEP 28 1992
MIGUEL J. CORTEZ
CLERK

No. 91-8577

District Court Docket No. CR91-93

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN PATRICK LITEKY,
CHARLES JOSEPH LITEKY,
ROY LAWRENCE BOURGEOIS,

Defendants-Appellants.

Appeals from the United States District Court
for the Middle District of Georgia

Before ANDERSON, Circuit Judge, HILL and ESCHBACH*, Senior Circuit Judges.

J U D G M E N T

This cause came to be heard on the transcript of the record from the United States District Court for the Middle District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgments of convictions of the said District Court in this cause be and the same are hereby AFFIRMED.

*Honorable Jesse E. Eschbach, Senior U.S. Circuit Judge for the Seventh Circuit, sitting by designation.

Entered: September 28, 1992
For the Court: Miguel J. Cortez, Clerk

By: Karleen McNabb
Deputy Clerk

ISSUED AS MANDATE: OCT 20 1992

UNITED STATES of America,
Plaintiff-Appellee,

v.

John Patrick LITEKY, Charles Joseph Liteky, Roy Lawrence Bourgeois,
Defendants-Appellants.

No. 91-8577.

United States Court of Appeals,
Eleventh Circuit.

Sept. 28, 1992.

Defendants were convicted in the United States District Court for the Middle District of Georgia, No. CR91-93-COL, J. Robert Elliott, J., of willfully injuring federal property, and they appealed. The Court of Appeals held that in protestors' prosecution for willful injury of government property, the district judge properly declined to recuse himself on the ground that he had presided over one of the defendant's prior conviction which also related to a protest regarding United States foreign policy.

Affirmed.

1. Judges ⇐49(1)

Matters arising out of the course of judicial proceedings are not a proper basis for recusal.

2. Judges ⇐47(2)

In protestors' prosecution for willful injury of government property, the district judge properly declined to recuse himself on the ground that he had presided over one of the defendant's prior conviction, which also related to a protest regarding United States foreign policy in El Salvador. 18 U.S.C.A. § 1361; 28 U.S.C.A. §§ 144, 455(a).

Appeals from the United States District Court for the Middle District of Georgia

Before ANDERSON, Circuit Judge, HILL and ESCHBACH*, *Senior Circuit Judges.*

PER CURIAM.

[1, 2] In 1990, Charles Liteky, Patrick Liteky, and Father Roy Bourgeois spilled blood on federal property as part of a protest against the United States' involvement in El Salvador. The defendants were convicted of violating 18 U.S.C. § 1361, which prohibits "willfully injur[ing] ... any property of the United States...." Before the trial, the defendants requested that the district judge recuse himself, *see* 28 U.S.C. § 144; 28 U.S.C. § 455(a), because he had presided over Father Bourgeois' 1983 conviction, which also related to a protest regarding United States policy toward El Salvador. But matters arising out of the course of judicial proceedings are not a proper basis for recusal. *United States v. Alabama*, 828 F.2d 1532, 1540 (11th Cir. 1987), *cert. denied*, 487 U.S. 1210, 108 S.Ct. 2857, 101 L.Ed.2d 894 (1988); *In re Corrugated Container Antitrust Litigation*, 614 F.2d 958 (5th Cir.), *cert. denied*, 449 U.S. 888, 101 S.Ct. 244, 661 L.Ed.2d 114 (1980);

*Honorable Jesse E. Eschbach, Senior U.S. Circuit Judge for the Seventh Circuit, sitting by designation.

Davis v. Board of School Comrs., 517 F.2d 1044 (5th Cir.1975), *cert. denied*, 425 U.S. 944, 96 S.Ct. 1685, 48 L.Ed.2d 188 (1976). Therefore, the district court properly rejected the motion. The defendants also contend that the district court denied them a fair trial. After carefully reviewing the defendants' arguments as well as the record on appeal, we have concluded that those arguments are without merit.

Conclusion

We AFFIRM the convictions.

Adm. Office, U.S. Courts—West Publishing Company, Saint Paul, Minn.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 91-8577

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN PATRICK LITEKY
CHARLES JOSEPH LITEKY,
ROY LAWRENCE BOURGEOIS,

Defendants-Appellants.

Appeal from the United States District Court for the Middle District of Georgia

ORDER:

Appellant's motion to appeal in forma pauperis is GRANTED.

Appellant's motion for appointment of counsel is GRANTED. Attorney Peter Thompson is APPOINTED as counsel for the appellants on this appeal.

/s/ JOEL F. DUBINA
UNITED STATES CIRCUIT JUDGE

United States District Court

FILED 3:00 PM
June 25, 1991
Deputy Clerk

MIDDLE District of GEORGIA

UNITED STATES OF AMERICA
V.

JUDGMENT INCLUDING SENTENCE UNDER THE SENTENCING REFORM ACT

Case Number 91-93-COL. 03

ROY LAWRENCE BOURGEOIS

(Name of Defendant)

Peter Thompson, Minneapolis, MN
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____.
☑ was found guilty on count(s) 1 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Count Number(s)
18 USC 1361	damage to U.S. Government property with a value in excess of $100.00.	1

The defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____, and is discharged as to such count(s).
☑ Count(s) 2, 3 & 4 (is)(are) dismissed on the motion of the United States.
☑ The mandatory special assessment is included in the portion of this Judgment that imposes a fine.
☐ It is ordered that the defendant shall pay to the United States a special assessment of $ _____, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:
434-54-4376

Defendant's mailing address:
2420 Ft. Benning Road
Columbus, GA 31903

Defendant's residence address:

June 21, 1991
Date of Imposition of Sentence

Signature of Judicial Officer

J. Robert Elliott, U.S. District Judge
Name & Title of Judicial Officer

June 25, 1991
Date

Defendant: Roy Lawrence Bourgeois
Case Number: CR-91-93-COL. 03

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 15 Months.

☐ The Court makes the following recommendations to the Bureau of Prisons:

☑ The defendant is remanded to the custody of the United States Marshal.
☐ The defendant shall surrender to the United States Marshal for this district,
☐ at _____ a.m. p.m. on _____.
☐ as notified by the Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons
☐ before 2 p.m. on _____.
☐ as notified by the United States Marshal.
☐ as notified by the Probation Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: Roy Lawrence Bourgeois
Case Number: CR-91-93-COL. 03

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of _____
2 YEARS

In addition to the standadd conditions, the folsowing conditions are imposed:

1. The defendant shall be prohibited from possessing a firearm or other dangerous weapon.

2. The defendant shall not enter or go on the grounds of any military reservation or property of any branch of the Armed Services of the U.S. Government.

While on supervised release, the defendant shall not commit another Federal, state, or local crime and shall comply with the standard conditions that have been adopted by this court (set forth on the following page). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

☐ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

Defendant: Roy Lawrence Bourgeois
Case Number: CR. 91-93-COL. 03

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on probation or supervised release pursuant to this Judgment:

1) The defendant shall not commit another Federal, state or local crime;
2) the defendant shall not leave the judicial district without the permission of the court or probation officer;
3) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
4) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
5) the defendant shall support his or her dependents and meet other family responsibilities;
6) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
7) the defendant shall notify the probation officer within seventy-two hours of any change in residence or employment;
8) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
9) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
10) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
11) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
12) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
13) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
14) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

These conditions are in addition to any other conditions imposed by this Judgment.

Defendant: Roy Lawrence Bourgeois
Case Number: CR-91-93-COL. 03

FINE WITH SPECIAL ASSESSMENT

The defendant shall pay to the United States the sum of $ 50.00 , consisting of a fine of $ -0- and a special assessment of $ 50.00 .

☒ These amounts are the totals of the fines and assessments imposed on individual counts, as follows:
Count 1.

The Court has determined that defendant does not possess the financial ability to pay additional fines and waives imposition of said fines or alternative sanctions.

This sum shall be paid ☒ immediately.
☐ as follows:

☐ The Court has determined that the defendant does not have the ability to pay interest. It is ordered that:

☐ The interest requirement is waived.
☐ The interest requirement is modified as follows:

Defendant: Roy Lawrence Bourgeois
Case Number: CR-91-93-COL. 03

RESTITUTION, FORFEITURE, OR OTHER PROVISIONS OF THE JUDGMENT

The defendant shall pay restitution to the U.S. Government in the amount of $636.47 at the rate of $100.00 per month, thru the U.S. Attorney.

United States District Court

FILED 3:00 PM
June 25, 1991
Deputy Clerk

OCT 1991

MIDDLE District of GEORGIA

UNITED STATES OF AMERICA

V.

JUDGMENT INCLUDING SENTENCE UNDER THE SENTENCING REFORM ACT

Case Number 91-93-COL. 02

CHARLES JOSEPH LITEKY

(Name of Defendant) Waived
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____.
☒ was found guilty on count(s) 1 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Count Number(s)
18 USC 1361	damage to U.S. Government property with a value in excess of $100.00.	1

The defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____, and is discharged as to such count(s).
☒ Count(s) 2, 3 & 4 (is)(are) dismissed on the motion of the United States.
☒ The mandatory special assessment is included in the portion of this Judgment that imposes a fine.
☐ It is ordered that the defendant shall pay to the United States a special assessment of $ _____, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:
261-36-1808

June 21, 1991
Date of Imposition of Sentence

Defendant's mailing address:
14018 Burnt Woods Road
Glenelg, MD. 21737

Signature of Judicial Officer

J. Robert Elliott, U.S. District Judg
Name & Title of Judicial Officer

Defendant's residence address:

June 25, 1991
Date

Defendant: Charles Joseph Liteky
Case Number: CR-91-93-COL. 02

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 6 months.

☐ The Court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.
☐ The defendant shall surrender to the United States Marshal for this district,

☐ at _____ a.m. p.m. on _____.

☐ as notified by the Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons

☐ before 2 p.m. on _____.
☐ as notified by the United States Marshal.
☐ as notified by the Probation Office.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this Judgment.

_____
United States Marshal

By _____

Defendant: Charles Joseph Liteky
Case Number: CR-91-93-COL. 02

FINE WITH SPECIAL ASSESSMENT

The defendant shall pay to the United States the sum of $ 50.00, consisting of a fine of $ -0- and a special assessment of $ 50.00.

☒ These amounts are the totals of the fines and assessments imposed on individual counts, as follows:

Count 1.

The Court has determined that defendant does not possess the financial ability to pay additional fines and waives imposition of said fines or alternative sanctions.

This sum shall be paid ☒ immediately.
☐ as follows:

☐ The Court has determined that the defendant does not have the ability to pay interest. It is ordered that:

☐ The interest requirement is waived.
☐ The interest requirement is modified as follows:

Defendant: Charles Joseph Liteky
Case Number: CR-91-93-COL. 02

RESTITUTION, FORFEITURE, OR OTHER PROVISIONS OF THE JUDGMENT

The defendant shall pay restitution to the United States Government in the amount of $636.47, within 6 months, thru the U.S. Attorney.

United States District Court

DEC 01 1991

FILED 3:00 PM
June 25, 1991
Deputy Clerk

MIDDLE District of GEORGIA

UNITED STATES OF AMERICA

V.

JUDGMENT INCLUDING SENTENCE UNDER THE SENTENCING REFORM ACT

JOHN PATRICK LITEKY

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JUL - 1 1991
MIGUEL J. CORTEZ
CLERK

Case Number 91-93-COL. 01

(Name of Defendant)

Waived
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____.
☒ was found guilty on count(s) 1 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Count Number(s)
18 USC 1361	damage to U.S. Government property with a value in excess of $100.00	1

The defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____, and is discharged as to such count(s).
☒ Count(s) 2, 3 & 4 (is)(are) dismissed on the motion of the United States.
☒ The mandatory special assessment is included in the portion of this Judgment that imposes a fine.
☐ It is ordered that the defendant shall pay to the United States a special assessment of $ _____, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:
267-50-7406

Defendant's mailing address:
1933 Park Avenue
Baltimore, MD 21217

Defendant's residence address:

June 21, 1991
Date of Imposition of Sentence

Signature of Judicial Officer

J. Robert Elliott, U.S. District Judge
Name & Title of Judicial Officer

June 25, 1991
Date

A true and certified copy.
This 6-28-1991
GREGORY J. LEONARD, CLERK
U.S. Dist. Court, MD Ga.
By: DEPUTY CLERK

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 6 Months.

☐ The Court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.
☐ The defendant shall surrender to the United States Marshal for this district,
☐ at _____ a.m. / p.m. on _____.
☐ as notified by the Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons
☐ before 2 p.m. on _____.
☐ as notified by the United States Marshal.
☒ as notified by the Probation Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: John Patrick Liteky
Case Number: CR-91-93-COL. 01

FINE WITH SPECIAL ASSESSMENT

The defendant shall pay to the United States the sum of $ 50.00, consisting of a fine of $ -0- and a special assessment of $ 50.00.

☒ These amounts are the totals of the fines and assessments imposed on individual counts, as follows:

Count 1.

The Court has determined that defendant does not possess the financial ability to pay additional fines and waives imposition of said fines or alternative sanctions.

This sum shall be paid ☒ immediately.
☐ as follows:

☐ The Court has determined that the defendant does not have the ability to pay interest. It is ordered that:

☐ The interest requirement is waived.
☐ The interest requirement is modified as follows:

Defendant: John Patrick Liteky
Case Number: CR-91-93-COL. . 01

RESTITUTION, FORFEITURE, OR OTHER PROVISIONS OF THE JUDGMENT

The defendant shall pay restitution to the United States Government in the amount of $636.47, within 6 Months, thru the U.S. Attorney.

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

UNITED STATES OF AMERICA :
:
vs. : CRIMINAL NO: 91-93-COL(JRE)
:
JOHN PATRICK LITEKY, :
CHARLES JOSEPH LITEKY, :
and ROY BOURGEOIS :
:

Filed at 12:45P M
FEB 25 1991
DEPUTY CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

ORDER ON DEFENDANTS' MOTION TO RECUSE

The Court has carefully reviewed the motion of the defendants in the above captioned matter requesting recusal of this Court in the trial of said matter.

The Court finds that the motion for recusal and the documents in support thereof are insufficient on their face to warrant granting the relief sought. Said motion is insufficient in the following particulars, to-wit:

The main thrust of the motion alleges bias on the part of this Court primarily against Defendant Bourgeois as a result of a bench trial of that defendant before this court in 1983 in Criminal No: 83-316-COL. All allegations of bias resulting from that trial arise out of matters occurring during the course of that case. Matters arising out of the course of judicial proceedings are not a proper basis for recusal under either Title 18 United States Code Section 144 or Title 18 United States Code Section 455. In re Corrugated Container Antitrust Litigation, 614 F.2d 958 (5th Cir. 1980), cert. denied, 101 S.Ct. 244; Davis v. Board of School Commissioners, 517 F.2d 1044 (5th Cir. 1975),

cert. denied 425 U.S. 944.

All other factual allegations contained in the motion to recuse and its supporting documents are conclusory in nature, do not state any particulars in which this Court is supposed to be biased either against the defendants or toward the government, and pertain only to the general background and associations of the Court. Additionally, such facts are not of such nature that an objective, disinterested lay observer would entertain a significant doubt about this Court's impartiality based thereon. United States v. Alabama, 828 F.2d 1532 (11th Cir. 1987), cert. denied, 108 S.Ct. 2857.

The defendants' motion for recusal being insufficient under the requirement both Title 18 United States Code Section 144 and Title 18 United States Code 455, same is denied.

SO ORDERED this 25 day of February, 1991.

J. ROBERT ELLIOTT
UNITED STATES DISTRICT JUDGE

UNITED STATES SUPREME COURT

ROY LAWRENCE BOURGEOIS,)
CHARLES JOSEPH LITEKY, and)
JOHN PATRICK LITEKY,)
)
Petitioners,)
)
vs.)
)
UNITED STATES OF AMERICA,)
)
Respondent.)

ORIGINAL

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 92-6921

Petitioners, pursuant to Sup.Ct.R. 39(.1), hereby move the Court for leave to proceed in forma pauperis on the grounds that such leave had been previously granted by the Court of Appeals for the Eleventh Circuit, and since that time, Petitioners' financial status has not changed. The Eleventh Circuit ruling reversed the trial Court's determination that there "is not probable cause for appeal". Counsel was appointed under the Criminal Justice Act by the Eleventh Circuit Court of Appeals. Petitioners will be unable to continue with the Petition or appeal process if required to pay the costs.

Dated: December 10, 1992

Respectfully submitted,

THOMPSON, LUNDQUIST & SICOLI, LTD.

By: Peter Thompson
Peter Thompson, 109344
2520 Park Avenue South
Minneapolis, Minnesota 55404
(612) 871-0708

Attorneys for Petitioners